

Remarks:

In the September 10, 2004, Office Action, Claims 116 and 144 were withdrawn from consideration as being drawn to a non-elected embodiment. The drawings were objected to under 37 C.F.R. 1.83(a) as not showing features of the invention specified in the claims. The features allegedly not shown in the drawings were stated to be: "the areas of structural weakness nonlinearly extending across a width dimension or a length dimension (claims 86-88 and 106-108), the areas of structural weakness comprising a hermetic seal (claim 142) and the tear tape structure coupled to the web material adjacent to at least one area of structural weakness (claim 150)." The Examiner also stated that "should claims 75-78 and 81-95 be found allowable, claims 96-98 and 101-115 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof." Claims 86-88 and 106-108 were also rejected under 35 U.S.C. Section 112, first paragraph, as failing to comply with the enablement requirement.

On the merits, Claims 75-77, 81-85, 89, 90, 96, 97, 101-105, 109, 110, 138-141, 143, 145, 147, and 152 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent No. 3,181,583 to Lingenfelter and U.S. Patent No. 5,875,611 to Plourde. Claims 78 and 98 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lingenfelter and Plourde. Claims 86-88 and 106-108 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lingenfelter and

Plourde. Claims 91, 92, 111, 112, 148, and 149 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lingenfelter and Plourde.

Claims 93-95, 113-115, and 146 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lingenfelter and Plourde. Claim 142 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lingenfelter and Plourde. Claim 150 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lingenfelter and Plourde. Claim 151 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lingenfelter and Plourde. Claim 153 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lingenfelter and Plourde.

Claim 96 has been amended to correct a typographical error. Claim 116 has been amended to overcome the deficiency that resulted in it formerly being withdrawn. Since Claim 116 now has a tear tape located on each side of the fold, it has two areas of structural weakness. No new matter has been added. Reconsideration of Claim 116 is respectfully requested.

With regard to the objections to the drawings, Applicants respectfully traverse the Examiner's objections inasmuch as each of the noted features are in fact shown in the drawings. With regard first to the areas of structural weakness nonlinearly extending across a width dimension or a length dimension, this feature is clearly shown in Fig. 5, in which the score lines 12 are clearly nonlinear in that they contain S-shaped curves at each end thereof. Thus, the objection to the drawings as not including this feature is incorrect,

and must be withdrawn. As such, no new drawings are necessary to show this feature, and none will be added.

With regard to the second objection to the drawings relating to the areas of structural weakness comprising a hermetic seal, this feature is clearly shown in Figs. 40d and 40e. In Fig. 40d, the scores 12d are areas of structural weakness which comprise a hermetic seal, inasmuch as scores, as is well known in the art, do not extend through the scored material, thereby leaving it intact and presenting a hermetic seal. Likewise, in Fig. 40e, the areas 12e in the multiple laminate materials comprise a hermetic seal since a layer of the material is intact, thereby presenting a hermetic seal. Thus, the objection to the drawings as not including this feature is incorrect, and must be withdrawn. As such, no new drawings are necessary to show this feature, and none will be added.

With regard to the third objection to the drawings relating to the tear tape structure coupled to the web material adjacent to at least one area of structural weakness, this feature is clearly shown in Figs. 21 and 22 and is identified there with the reference numeral 120, as well as being shown in additional figures. Thus, the objection to the drawings as not including this feature is incorrect, and must be withdrawn. As such, no new drawings are necessary to show this feature, and none will be added.

Although it is not necessary, Applicants choose to comment on the Examiner's statement that should the claims be allowed, Claims 96-98 and 101-115 will be objected to under 37 CFR Section 1.75 as being a substantial duplicate of Claims 75-78 and 81-95.

Since in these claims only Claims 75 and 96 are independent, it is legally sufficient that they not be substantial duplicates of each other. In point of fact, as is readily apparent from comparing these two claims side-by-side, they are NOT duplicates of each other, and certainly have sufficient differences from each other for the Examiner's suggestion to be completely in error. The fact that the dependent claims may be identical is completely irrelevant, since only the independent claims need be different. As such, the Examiner is respectfully requested to reconsider this point.

The Examiner has also rejected Claims 86-88 and 106-108 as failing to comply with the enablement requirement, alleging that the claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art ... to make and/or use the invention. Claims 86 and 106 both require the areas of structural weakness to extend nonlinearly across a predetermined dimension of the sheet of web material. As mentioned above with reference to the incorrect assertion by the Examiner that the areas of structural weakness nonlinearly extending across a width dimension or a length dimension were not shown in the drawings, this feature is clearly shown in Fig. 5, and described in the accompanying portion of the specification. From even the briefest of examinations of Fig. 5 and the accompanying text, one skilled in the art will readily and completely understand the subject matter of the claims. As such, the rejection of Claims 86 and 106, and of Claims 87, 88, 107, and 108, which are dependent thereupon, is incorrect and must be withdrawn.

Applicants regard as their invention a reclosable bag formed of web material having a fold therein which forms the top of the bag (as shown in Figs. 40, 40a, 40b, 40c, 40d, 40e, 41, and 41a, with additional features being shown in other figures). Two areas of structural weakness are located on opposite sides of the fold, and an opening which may be used to fill the bag is located in the bag in a position which is directly opposite the fold. A reclosable fastener has a skirt structure including a distal portion which is coupled to the web material, and the reclosable fastener and its skirts extend over the two areas of structural weakness and the fold at the top of the bag to protect their integrity. The distal portions of the skirts are coupled to the bag in corresponding positions on opposite sides of the bag at locations between the areas of structural weakness and the opening. The portion of the web material forming the fold and between the two areas of structural weakness may be removed to unseal the contents of the bag, and the reclosable fastener allows access to the contents of the bag and enables the bag to be resealed. Thus, the tear-off portion represents a tamper-evident safeguard.

This invention is not taught or suggested in either of the Lingenfelter and the Plourde references used by the Examiner in the September 10, 2004, Office Action, or in those references taken together, or, indeed, by any other reference of which Applicants are aware.

Prior to discussing the claims as amended herein, it is useful to examine the references cited by the Examiner to note the differences between them and the present

invention as claimed. The Lingenfelter reference (U.S. Patent No. 3,181,583) teaches a reclosable plastic bag which has a tongue and groove closure member which is mounted onto the upper end of the bag. The upper end of the bag may be torn open, but does not have a segment having two areas of structural weakness as does the present invention as claimed. The obvious disadvantage of the Lingenfelter bag is that it is not easy to see if the bag has been opened, unless the closure member is opened. Opening the closure member to determine whether the bag has been opened will result in the bag being torn open due to the construction of the Lingenfelter bag.

The Plourde reference (U.S. Patent No. 5,875,611) teaches a side-filled bag which requires detaching the bag from other bags on the production line in order to fill it -- an approach which will necessarily greatly decrease the speed of the production line and hence the overall efficiency of the operation. The Plourde bag is manufactured with an opening on a side thereof which is not opposite a fold as required by the claims of the present invention. In addition, the seals 46 and 48 between the flange areas 32 of the zipper tape 20 and the tube sheet material 10 in the Plourde bag are not on opposed locations which are respectively located on opposite sides of the tubular sheet of material, but are specifically stated to be required to be offset from each other. This is apparently required by the manufacturing process used by Plourde, and results in a bag which clearly has offset seals. In addition, Plourde does not produce an area between the perforations

40 on the tube sheet material 10 which is truly on opposite sides of a fold -- rather, the perforations 40 are on an arc forming one of the shorter sides of the Plourde bag.

The Examiner has rejected all of the claims of the present application (other than the claims which were deemed to be withdrawn) in a total of nine (9) separate Section 103(a) rejections, all of which are on the same two references, namely Lingenfelter and Plourde. The rejections of the claims are traversed for two independent reasons --- first, that the rejections fail to present proper prima facie rejections in that they do not present evidence that would have led one of ordinary skill in the art to arrive at the claimed invention, and thus rely entirely upon Applicants' disclosure and teachings to supply that which is lacking in the applied prior art references; and second, that the claims of the present invention contain limitations which are not taught or suggested by either of the cited prior art references, either individually or in combination.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Dir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17,

148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. See also In re Rouffet, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998). Such reason must stem from some teaching, suggestion, or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 22y USPQ 657, 664, (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

The September 10, 2004, Office Action did not present a single word regarding the knowledge one skilled in the art would have had, or any reason, either in the references themselves or in the possession of one skilled in the art, as to why one skilled in the art would have made the combinations cited in the obviousness rejections. Instead, with regard to independent Claims 75, 96, and 138 (independent Claim 116 was deemed to be withdrawn and was not rejected on the merits), the sole rationale for the combination was stated to be that "[i]t would have been obvious to one having ordinary

skill in the art at the time the invention was made to provide the front and rear panels of Lingenfelter with the areas of structural weakness of Plourde '611, in order to provide wider access opening to the interior of the bag." This rationale is fallacious, inasmuch as there is absolutely no difference in the width of the opening to the bag achieved by the combination -- the width of the opening is instead dependent on the size of the bag. Modifying the Lingenfelter bag to add the Plourde perforations would not make one iota of difference in the width of the opening.

What the September 10, 2004, Office Action did was to use the elements of Applicants' claims as a recipe list to facilitate a hindsight-based reconstruction of Applicants' invention. With respect to an obviousness rejection based upon a combination of references, the Court of Appeals for the Federal Circuit has stated that "virtually all [inventions] are combinations of old elements." Environmental Designs, Ltd. v. Union Oil Co., 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed. Cir. 2003); see also Richdel, Inc. v. Sunspool Corp., 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed. Cir. 1983) ("Most, if not all, inventions are combinations and mostly of old elements.") Since examiners will often find every element of a claimed invention in the prior art, if identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would issue. However, the Court of Appeals for the Federal Circuit has stated that "the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or

motivation to combine the prior art references." Ecolochem, Inc. v. Southern California Edison Co., 227 F.3d 1361, 1371, 56 USPQ2d 1065, 1073 (Fed. Cir. 2000).

The recitation of references in the September 10, 2004, Office Action which disclose each of the elements of the claims without any reason that one skilled in the art would make the combination constitutes the use of hindsight and is per se improper. As stated by the Court of Appeals for the Federal Circuit, "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability -- the essence of hindsight." In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). This clear and inappropriate use of hindsight knowledge to establish obviousness is impermissible. The only possible conclusion is that the obviousness rejections in the September 10, 2004, Office Action are an improper combination of prior art references, and are not sustainable. Accordingly, they must be withdrawn.

In addition, the Lingenfelter and Plourde references fail to teach the invention as claimed in independent Claims 75, 96, 116, and 138. These claims each define a fold between the front and rear panels forming the bag. If the combination of the September 10, 2004, Office Action is made, it involves replacing the bag 10 of the Lingenfelter reference with the tubular sheet material 10 of the Plourde reference. The tubular sheet material 10 of the Plourde reference is tubular in configuration, and has an arc at the top

rather than a fold. Additionally, the tubular sheet material 10 of the Plourde reference is open on the sides rather than at the bottom end. Taking just the top portion of the Plourde bag and substituting it for the top portion of the bag 10 of the Lingenfelter device would destroy the operation of the tubular sheet material 10 of the Plourde bag.

Additionally, independent Claims 75, 96, 116, and 138 all specifically require that the distal margins of the skirt structures be coupled to the web material forming the bag at corresponding opposed locations. Neither the Lingenfelter device nor the Plourde device meet this limitation, since both quite clearly attach an intermediate portion of the skirt structure of their respective fasteners to the bag rather than the distal portions. In the Lingenfelter reference, note that intermediate portions of the closure strips 14 and 16 are attached to the panels 19 and 21, respectively, of the bag 10. The distal portions of the closure strips 14 and 16 are quite clearly adjacent but not coupled to the panels 19 and 21 of the bag 10. In the Plourde reference, note that the offset seal 48 is quite clearly not located at the distal portion of the segment of the hood supporting the male zipper profile 24.

Still additionally, the Plourde reference is inconsistent with the Lingenfelter reference in that Plourde uses offset seals to attach the zipper tape 20 to the tube sheet material 10, while independent Claims 75, 96, 116, and 138 all specifically recite that the distal margins of the skirt structures are coupled to the web material at corresponding opposed locations. Since the limitations of independent Claims 75, 96, 116, and 138 are

not taught in the cited prior art, independent Claims 75, 96, 116, and 138 are believed to patentably distinguish these claims over the combination of Lingenfelter and Plourde even if the combination was valid (which it is not). Thus, Applicants believe that independent Claims 75, 96, 116, and 138 are allowable, and respectfully requests their allowance by the Examiner.

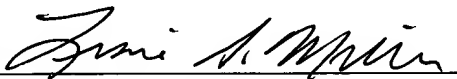
Dependent Claims 76-95 depend upon independent Claim 75, which as stated above is believed to be allowable, and thus these dependent claims are also believed to be allowable, and their allowance is also respectfully requested. Accordingly, there is believed to be no need to comment on the rejections of the dependent claims, since they are believed to be allowable by virtue of their dependency upon Claim 75, which is believed to be allowable for the reasons stated above. Applicants note that while Claims 79 and 80 were withdrawn, the allowance of Claim 75 would require their allowance as well.

Dependent Claims 97-115, which depend on independent Claim 95, are also believed to be allowable by virtue of their dependency upon Claim 96, which is believed to be allowable for the reasons stated above. Applicants note that while Claims 99 and 100 were withdrawn, the allowance of Claim 96 would require their allowance as well. Finally, dependent Claims 139-153, which depend on independent Claim 138, are also believed to be allowable by virtue of their dependency upon Claim 138, which is believed

to be allowable for the reasons stated above. Applicants note that while Claim 144 was withdrawn, the allowance of Claim 138 would require its allowance as well.

Accordingly, Applicants believe that Claims 75-116 and 138-153 are patentable at this time. These claims remain pending following entry of this Amendment H, and are in condition for allowance at this time. As such, Applicants respectfully request entry of the present Amendment H and reconsideration of the application, with an early and favorable decision being solicited. Should the Examiner believe that the prosecution of the application could be expedited, the Examiner is requested to call Applicants' undersigned attorney at the number listed below.

Respectfully submitted:

BY 
Leslie S. Miller
Attorney for Applicants
Registration No. 30,662

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202

(414) 298-8321

Customer No. 22922